



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 10, 2003

Ms. Lisa R. McBride
Bracewell & Patterson, L.L.P.
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR2003-0874

Dear Ms. McBride:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176312.

The Humble Independent School District (the "district"), which you represent, received a request for information relating to a named individual, including (1) evaluations of the individual as an employee of the district; (2) records relating to any complaint made about the individual by a student, parent, or district administrator or employee; and (3) information relating to the individual leaving employment with the district. You indicate that the district has no information that is responsive to item number 2 of the request. Chapter 552 of the Government Code does not require the district to release information that did not exist when it received this request or to create responsive information. *See Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).* You claim that most of the remaining requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See Open Records Decision No. 643 (1996).* In that decision, we determined that the word "teacher," for purposes of section 21.355, is a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is

engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* Open Records Decision No. 643 at 4. We also concluded that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You state, and have provided documentation demonstrating, that the documents submitted as pages 0001 through 0042 in Exhibit C are evaluations of a former district teacher or administrator. Based on your representations, the supporting documentation you submitted, and our review of the information at issue, we agree that pages 0001 through 0042 consist of evaluations of a teacher or administrator for the purposes of section 21.355 of the Education Code. Therefore, that information is excepted from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law.

Section 552.117(1) of the Government Code excepts from disclosure the home address and home telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district must withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for the information was made. The district may not withhold information under section 552.117 on behalf of a current or former official or employee who did not make a timely election under section 552.024 to keep the information confidential.

The district seeks to withhold parts of the remaining documents in Exhibit C under section 552.117(1).¹ You state that the former district employee to whom the information at issue relates timely elected under section 552.024 to keep the information confidential. Based on your representations, we agree that the highlighted portions of pages 0043 through 0045 are excepted from disclosure under section 552.117.

In summary, pages 0001 through 0042 in Exhibit C are excepted from disclosure in their entirety under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The highlighted portions of pages 0043 through 0045 are excepted from disclosure under section 552.117.

¹You inform us that the rest of the information in these documents has been released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

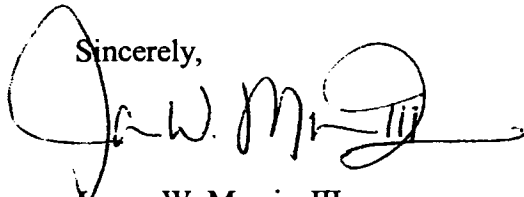
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 176312

Enc: Submitted documents

c: Mr. Robert H. Jackson, Ph.D.
The Law Firm of Truman Dean
P.O. Box 2560
Cedar Park, Texas 78630
(w/o enclosures)